IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

(1) WRIT PETITION NO. 700 OF 2004

Shiakh Mohd. Shafi Ibrahim ...Petitioner

Vs.

Khwaja Mohd. R.Shaikh
and Anr. ...Respondents

....
Mr.N.R.Bubana for Petitioner
Mr.S.A.Rehman for Respondent no.2
Mr.M.S.Mhambry, A.P.P. for State
....

WITH

(2) WRIT PETITION NO.696 OF 2004

Shaikh Mohd.Shafi Ibrahim ..Petitioner

Vs.

Mohd.Rafique Mehboob Shaikh
and Anr. ...Respondents

....
Mr.N.R.Bubna for Petitioner
Mr.S.A.Rehman for Respondent no.2
Mr.M.S.Mhambry A.P.P. for State
....

WITH

(3) WRIT PETITION NO.697 OF 2004

Shaikh Mohd.Shafi Ibrahim ..Petitioner

Vs.

Khwaja Mohd. R. Shaikh
and Anr. ...Respondents

....
Mr.N.R.Bubna for Petitioner
Mr.S.A.Rehman for Respondent no.2
Mr.M.S.Mhambry A.P.P. for State
....

WITH

(4) WRIT PETITION NO.698 OF 2004

Shaikh Mohd.Shafi Ibrahim ..Petitioner

Vs.

Rehanabee Jafar Shaikh
and Anr. ..Respondents

....
Mr.N.R.Bubna for Petitioner
Mr.S.A.Rehman for Respondent no.2
Mr.Y.S.Shinde, A.P.P. for State
....

WITH

(5) WRIT PETITION NO.699 OF 2004

Shaikh Mohd.Shafi Ibrahim ..Petitioner

Vs.

Rehanabee Jafar Shaikh
@ Ghodombe Jafar Shaikh
and Anr. ..Respondents

....
Mr.N.R.Bubna for Petitioner
Mr.S.A.Rehman for Respondent no.2
Mr.Y.S.Shinde,A.P.P. for State
....

WITH

(6) WRIT PETITION NO.701 OF 2004

Shaikh Mohd.Shafi Ibrahim ..Petitioner

Vs.

Mohd.Rafique Mehboob Shaikh
and Anr. ...Respondents

....
Mr.N.R.Bubna for Petitioner
Mr.S.A.Rehman for Respondent no.2
Mr.Y.S.Shinde A.P.P. for State
....

WITH
(8) WRIT PETITION NO.702 OF 2004

Shaikh Mohd.Shafi Ibrahim ..Petitioner

Vs.

Mansur Yusuf Shaikh
and Anr. ...Respondents

....
Mr.N.R.Bubna for Petitioner
Mr.S.A.Rehman for Respondent no.2
Ms.Shilpa Gajare A.P.P. for State
....

WITH
(9) WRIT PETITION NO.703 OF 2004

Shaikh Mohd.Shafi Ibrahim ..Petitioner

Vs.

Mansur Yusuf Shaikh
and Anr. ...Respondents

....
Mr.N.R.Bubna for Petitioner
Mr.S.A.Rehman for Respondent no.2
Ms.Shilpa Gajare A.P.P. for State
....

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : JUNE 10, 2005

P.C.

1. Heard the learned advocate for the petitioner, learned advocate for Respondent no.1 i.e. original complainant and the learned A.P.P. for the State in all petitions.

2. The petitioner is seeking quashing of the order passed by the learned Xth Additional District Judge, Pune in Revision Applications arising out of the judgment and order dated 6.8.2003 passed by the J.M.F.C. No.1 Pune in applications filed by the Petitioner for recalling of process before the learned Magistrate in Criminal Complaint Nos. 199 of 2001, 197 of 2001, 200 of 2001, 78 of 2001, 79 of 2001, 198 of 2001, 195 of 2001 and 196 of 2001.

3. In all the aforesaid criminal complaints, the learned Magistrate has issued process against the petitioner under Section 138 of Negotiable Instruments Act. The petitioner has filed applications for recalling of the process before the learned Magistrate, however, the said applications came to be rejected. The petitioner challenged the said order of the Magistrate by

filing revision applications before the Xth Addl. Sessions Judge, Pune. However, the said revision applications also came to be rejected. Hence, the petitioner has filed these writ petitions challenging the order of the learned Xth Addl.Sessions Judge before this Court. In view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and others; 2004(4) Mh.L.J. 274,** it is clear that the Magistrate has no power to recall the process which has been issued by him. As the petitioner has challenged before the Sessions Court only the order of the Magistrate rejecting their application for recall of process, the learned Sessions Judge has dismissed the said revision. It is clear that the Magistrate cannot recall the order of process which has been issued by him. However, in my view, opportunity ought to be granted to the petitioner to prefer a revision before the concerned Sessions Court against the order of the Magistrate issuing process against him.

3. In view of the reasons recorded in my order dated 8th June, 2005 in Cri.Application No. 645 of 2005, the petitioner has an efficacious remedy of

preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioner to prefer the necessary revision before the concerned Sessions Court. Interim relief granted earlier will continue for a period of six weeks from today.

5. It is clarified that the revision shall be preferred by the petitioner against the order of learned Magistrate issuing process against him.

6. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing necessary parties.

7. Writ Petitions are disposed of.

[V.K.TAHILRAMANI,J.]